

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

SOMESHWAR V. THE STATE OF RAJASTHAN

D. B. CRIMINAL APPEAL NO. 255/2002

Under Section 374 (2), Cr.P.C., against the Judgment dated 08-01-2002, passed by Shri G.S.Surana, RHJS, the learned Sessions Judge, Dungarpur, in Sessions Case No.8/2001.

DATE OF JUDGMENT :::: 07-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Mr.S.K.Poonia for Mr.Sanjay Mathur,
for Appellant.
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

This appeal is preferred by accused Someshwar against the judgment of the Court of Sessions Judge, Dungarpur in Sessions

Case No. 8/2001. Smt.Kamtu lodged a First Information Report on 2.12.2000 at 9.00 p.m. In Police Station, Bichhiwara. It was orally stated that she has three sons and three daughters, out of which accused Someshwar is elder son. Deceased Radhelal was a Postman. Accused Someshwar used to quarrel with deceased Radhelal demanding his salary. Someshwar had beaten his father Radhelal on earlier occasions also, but the matter was not reported to the police on account of relation of son and father. On 1.12.2000, her husband was returning back after distribution of posts at about 10 -11 P.M. At that time, she along with daughter Sharda were waiting for him. Someshwar hit Radhelal with the stick, causing death. The incident was first informed to Kushal and, thereafter, reported to the Police. The FIR was registered under Sections 302 and 341 of IPC, bearing FIR No.349/2000.

Police conducted investigation and filed charge sheet before the Court of Additional Chief Judicial Magistrate, Dungarpur, from where the case was committed to the Court of Sessions Judge, Dungarpur. Charge was framed under Section 302 of IPC which was denied by the accused who claimed trial. 13 witnesses and twenty-five documents were produced by the prosecution, whereas two documents were produced by the defense. The statement of the accused was recorded under Section 313, Cr.P.C., who stated that he is innocent in the

matter and Deceased Radhelal died by falling from the wall of the pond under the influence of liquor.

The trial Court convicted accused under Section 302 and sentence him for life imprisonment and penalty of Rs.1,000/- in default to further undergo three months' rigorous imprisonment.

Learned counsel for the appellant submitted that deceased died for the reason that he was under the influence of liquor and fell down while sitting on the wall of the pond. It was submitted that the appellant was falsely implicated in the matter due to family dispute. Thus, it was urged that conviction and sentence of accused deserve to be set aside as no case under Section 302 of I.P.C. is made out.

Per contra, learned Public Prosecutor submitted that Learned trial Court considered the statements of eye witnesses. Based on material on record, order of conviction and sentence was passed. It was urged that accused was not falsely implicated in the matter and it is not a case where deceased died by falling down from the wall of the pond. It was submitted that material available on record shows that accused Someshwar inflicted injuries, causing death. Hence, learned Public Prosecutor prayed to maintain the judgment of the trial Court.

We have considered rival submissions of the learned counsel for the parties and gone through the material available on record. As per the statement of PW 1 Smt. Kamtu, accused

Someshwar hit deceased Radhelal, for the reason that accused was demanding salary of the deceased for the last three months and when his demand was not satisfied, accused Someshwar hit Radhelal, causing head injuries. In cross-examination, said witness denied the fact that deceased died by falling down from the wall of pond. She has further clarified that incident took place at 10 – 11.00 p.m. When she was waiting for deceased Radhelal.

PW 7 Dr.G.L.Rathore stated that deceased sustained five injuries, out of which only one injury was serious and other injuries were simple in nature. It was further being stated that the cause of death is due to excessive bleeding arising out of head injury. It was admitted by the said witness that injury sustained by the deceased was not sufficient to cause death. In the cross examination, said witness stated that head injury seems to have been sustained by stick.

PW 12 Lal Singh stated that he had recovered lathi at the instance of accused Someshwar. It was further stated that blood stained clothes of the accused were recovered from accused's field.

On careful consideration of the case, we find that as per the statement of PW 7 Dr.G.L.Rathore, deceased died due to excess bleeding out of head injury. In his opinion, blow on the head was not sufficient to cause death and other injuries

sustained by the deceased were simple in nature. We also perused Post Mortem Report of deceased Radhelal.

The learned trial Court ignored statement of Dr.G.L. Rathore who had clearly stated that injury caused was not sufficient to cause death. Even in the FIR, complainant attributed one injury to the deceased. The injury was caused by a stick. Thus, it cannot be said that accused gave bodily injury to the deceased with intention to cause death. The finding of the learned trial Court in ignorance of above facts cannot sustain.

Present case is not made out under Section 302 of IPC, instead it falls under Section 304 Part II of IPC. The accused having died due to excessive bleeding out of head injury which was caused by accused, but as per opinion of the Doctor, injury was not sufficient to cause death, it becomes clear that the accused was having no intention to cause death. Only one blow is attributed towards the accused in the FIR. Thus, the present case falls under Section 304 Part -II of IPC. Therefore conviction and sentence of the appellant under Section 302 of IPC cannot be sustained, hence set aside.

The accused, however, is convicted under Section 304 Part II of IPC for the reasons mentioned above and is sentenced for seven years' rigorous imprisonment with penalty of Rs.5,000/-, in case of default in making payment of penalty, to serve three months' rigorous imprisonment. The accused will

serve the remaining part of sentence. The appeal is accordingly decided.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.